

REMARKS

Claims 1-10 and 96 are pending in the application. Applicant gratefully acknowledges that Claims 8, 10 and 96 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Please amend Claims 1, 2 and 6 as set forth herein. Please cancel Claims 11-95 and 97-103, without prejudice. No new matter has been added.

The Examiner objected to Claims 1 and 2 based on informalities. The Examiner rejected Claims 1 and 6 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner rejected Claims 1-6 on the grounds of non-statutory obviousness-type double patenting (ODP) over Claims 1-5 of U.S. Patent 6,567,391 to Moon et al. (Your Ref.: P8864; Our Ref.: 678-352).

Regarding the objection to Claim 1, the Examiner stated that “greater” is used in Claim 1 and “higher” is used in Claims 2 and 10, which creates an inconsistency. Claim 1 has been amended to change “greater” to “higher”.

Based on at least the foregoing, withdrawal of the objection to Claim 1 is respectfully requested.

Regarding the objection to Claim 2, the Examiner stated that “the predetermined power level” should read, “the second predetermined power level”. Claim 2 has been amended herein as suggested by the Examiner.

Based on at least the foregoing, withdrawal of the objection to Claim 2 is respectfully requested.

Regarding the rejection of Claim 1 under §112, second paragraph, the Examiner states that the claim is indefinite and should be amended to make clear that the pilot signal is transmitted at two different power levels. Claim 1 has been amended herein to recite, in part, transmitting a pilot signal at a second predetermined power level for a normal period and transmitting the pilot signal at a power level higher than the second predetermined power level for a predetermined time period.

Based on at least the foregoing, withdrawal of the rejection of Claim 1 under §112, second paragraph, is respectfully requested.

Regarding the rejection of Claim 6 under §112, second paragraph, the Examiner states that “the second signal” lacks antecedent basis. Claim 6 has been amended to change “the second signal” to read “the data channel signal”.

Based on at least the foregoing, withdrawal of the rejection of Claim 6 under §112, second paragraph, is respectfully requested.

Regarding the rejection of Claims 1-6 under the doctrine of ODP, the Examiner states that these claims are unpatentable over Claims 1-5 of U.S. Patent 6,567,391. A Terminal Disclaimer to remove the ODP rejection is filed herewith.

Based on at least the foregoing, withdrawal of the rejection of Claims 1-6 under the doctrine of ODP is respectfully requested.

Independent Claim 1 is believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2-10 and 96, these are likewise believed to be allowable at least by virtue of their dependence on their respective independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2-10 and 96 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-10 and 96, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicant's attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. M. Owens III', with a long horizontal line extending from the end of the signature.

Douglas M. Owens III
Reg. No. 51,314
Attorney for Applicant

THE FARRELL LAW FIRM
290 Broadhollow Road, Suite 210 E
Melville, New York 11747
Tel: (516) 228-3565
Fax: (516) 228-8475
PJF/MJM/dr